

## Message Text

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SUBJECT: TARAPUR

REF: STATE 153214

1. FOLLOWING ARE TEXTS, TRANSMITTED FYI, OF TWO PLEADINGS  
FILED BY DEPARTMENT OF STATE (THROUGH JUSTICE) IN U.S.  
COURT OF APPEALS ON JULY 5. NYE AFFIDAVIT TRANSMITTED  
SEPTEL. OTHER ATTACHMENTS TO DEPARTMENT'S PLEADINGS NOT  
TRANSMITTED. NRC ALSO FILED TWO PLEADINGS ON JULY 5 --  
"MOTION TO VACATE COURT ORDER OF JUNE 30, 1977" (2 PAGES)  
AND "OPPOSITION OF U.S. NUCLEAR REGULATORY COMMISSION  
TO PETITIONERS' MOTIONS OF JUNE 29 AND 30, 1977"  
(17 PAGES) -- NOT TRANSMITTED.

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2. BEGIN TEXT:

OPPOSITION TO MOTION FOR MANDAMUS AND EMERGENCY STAY AND  
REQUEST FOR DISSOLUTION OF SUSPENSION ORDER

THE DEPARTMENT OF STATE, INTERVENOR-RESPONDENT, BY ITS

UNDERSIGNED ATTORNEYS, RESPECTFULLY OPPOSES THE MOTION  
FOR MANDAMUS AND EMERGENCY STAY FILED BY PETITIONERS WHICH  
SEEKS TO ENJOIN AT THIS TIME THE SHIPMENT OF SPECIAL NUCLEAR

MATERIAL TO INDIA ON THE GROUNDS THAT THE GRANTING OF  
SUCH RELIEF WOULD BE PREJUDICIAL TO UNITED STATES FOREIGN  
POLICY INTERESTS AND WOULD HAVE A SERIOUS ADVERSE IMPACT  
UPON ONGOING NON-PROLIFERATION DISCUSSIONS AND NEGOTIA-  
TIONS BETWEEN THE UNITED STATES AND THE GOVERNMENT OF  
INDIA.

AS SUCH, THE RELIEF SOUGHT WOULD HAVE A SERIOUS IMPACT  
UPON THE PUBLIC INTEREST AS WELL AS PRIVATE INTERESTS  
INVOLVED. IN ADDITION, THE PETITIONERS CANNOT DEMON-  
STRATE THAT THEY ARE IRREPARABLY INJURED BY THIS SHIP-  
MENT OF SPECIAL NUCLEAR MATERIAL TO INDIA IN VIEW OF THE  
CONSOLIDATION BY THE NUCLEAR REGULATORY COMMISSION OF A  
SUBSEQUENT LICENSE APPLICATION FOR NUCLEAR MATERIAL  
FOR THE SAME FACILITY. ACCORDINGLY, THE DEPARTMENT OF  
STATE RESPECTFULLY REQUESTS THAT THE COURT DENY THE  
MOTION FOR MANDAMUS AND DISSOLVE ITS ORDER OF JUNE 30,  
1977, DIRECTING THE SUSPENSION OF LICENSE XS NM-845.

IN SUPPORT OF THIS OPPOSITION, THE COURT IS RESPECT-  
FULLY REFERRED TO THE AFFIDAVIT OF JOSEPH S. NYE, JR.,  
A COPY OF THE EXECUTIVE BRANCH SUBMISSION TO THE N.R.C.,  
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DATED JUNE 8, 1977, ATTACHED HERETO AND TO THE MEMO-  
RANDUM FILED HEREWITH.

END TEXT

3. BEGIN TEXT

MEMORANDUM OF THE DEPARTMENT OF STATE IN SUPPORT OF  
OPPOSITION TO MOTION FOR MANDAMUS AND EMERGENCY STAY

STATEMENT OF THE CASE

THE NUCLEAR REGULATORY COMMISSION, IN A UNANIMOUS  
DECISION ISSUED ON JUNE 28, 1977, DIRECTED THE ISSUANCE  
OF EXPORT LICENSE XS NM-845, AUTHORIZING THE SHIPMENT  
OF SPECIAL NUCLEAR MATERIAL TO INDIA. THIS LICENSE IS  
THE SUBJECT OF A PROCEEDING ALREADY PENDING BEFORE THIS  
COURT. FOLLOWING THE COMMISSION'S ACTION, PETITIONERS  
ASKED THIS COURT TO STAY THE ISSUANCE OF LICENSE APPLICA-

TION XS NM-845 UNTIL SUCH TIME AS (1) THE COMMISSION HAS  
PUBLISHED FINAL RULES AND PROCEDURES FOR PUBLIC PARTICI-

PATION IN EXPORT LICENSE PROCEEDINGS, (2) THIS COURT HAS RENDERED A DECISION ON THE MERITS OF THE APPEAL CURRENTLY PENDING BEFORE IT, AND (3) ASSUMING A FAVORABLE DECISION BY THE COURT, AN ADJUDICATORY HEARING IS HELD ON THE LICENSE APPLICATION.

THE SPECIAL NUCLEAR MATERIAL COVERED BY LICENSE XSNM-845 IS NEEDED FOR USE AT THE TARAPUR ATOMIC POWER STATION LOCATED NEAR BOMBAY, INDIA, AND IS BEING FURNISHED PURSUANT TO AN AGREEMENT FOR COOPERATION BETWEEN THE UNITED STATES AND THE GOVERNMENT OF INDIA. THE STATE DEPARTMENT, ON JUNE 8, 1977, FURNISHED THE NUCLEAR REGULATORY COMMISSION WITH THE WRITTEN POSITION OF THE EXECUTIVE BRANCH RECOMMENDING THE PROMPT ISSUANCE OF UNCLASSIFIED

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THIS LICENSE. THIS RECOMMENDATION WAS BASED ON THE JUDGMENT THAT THE SHIPMENT IS IMPORTANT TO THE CONDUCT OF THE NEW UNITED STATES' NUCLEAR POLICY AND THAT THE GRANT OF THE LICENSE WOULD NOT BE INIMICAL TO THE COMMON DEFENSE AND SECURITY BECAUSE USE OF THE FUEL WOULD BE SUBJECT TO ALL THE TERMS AND CONDITIONS CONTAINED IN THE AGREEMENT FOR COOPERATION BETWEEN THE UNITED STATES AND INDIA.

IN SUPPORT OF ITS OPPOSITION, THE GOVERNMENT HAS FILED THE AFFIDAVIT OF JOSEPH S. NYE, JR., DEPUTY TO THE UNDERSECRETARY OF STATE FOR SECURITY ASSISTANCE. MR. NYE IS PRIMARILY RESPONSIBLE FOR THE DEVELOPMENT AND IMPLEMENTATION OF THE UNITED STATES' NUCLEAR NON-PROLIFERATION POLICY. MR. NYE'S AFFIDAVIT POINTS OUT THAT PRESIDENT CARTER SPECIFICALLY APPROVED THE EXECUTIVE BRANCH POSITION WITH RESPECT TO THIS LICENSE AND THAT CONSIDERATIONS RELATING TO THIS LICENSE ARE INVOLVED IN SENSITIVE ONGOING DISCUSSIONS BETWEEN THE UNITED STATES GOVERNMENT AND THE GOVERNMENT OF INDIA CONCERNING NUCLEAR NONPROLIFERATION. THESE CONSIDERATIONS HAVE BEEN DISCUSSED DIRECTLY WITH INDIAN PRIME MINISTER DESAI, AND FURTHER DISCUSSIONS ARE CURRENTLY SCHEDULED TO TAKE PLACE IN INDIA ON OR ABOUT JULY 21, 1977. MR. NYE STATES IN HIS AFFIDAVIT THAT A FAILURE TO LIFT THE SUSPENSION OF THIS LICENSE MAY HAVE A SERIOUS AND ADVERSE IMPACT UPON THE CONDUCT OF THESE IMPORTANT FOREIGN POLICY INITIATIVES AS WELL AS THEIR OUTCOME.

THE EVENTS GIVING RISE TO THE CONTROVERSY ARE FULLY SET FORTH IN THE STATE DEPARTMENT'S BRIEF ALREADY ON FILE WITH THIS COURT. ARGUMENT WAS HEARD BY A PANEL IN DECEMBER 1976. IN ITS SUBMISSION OF JUNE 8, 1977, TO UNCLASSIFIED

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THE NUCLEAR REGULATORY COMMISSION, THE STATE DEPARTMENT POINTS OUT THAT THE NEED TO ISSUE THE LICENSE IN DISPUTE HAS BECOME INCREASINGLY URGENT IN ORDER TO PERMIT THE EFFICIENT OPERATION OF THE NUCLEAR FUEL FACILITY IN INDIA IN ACCORDANCE WITH OUR AGREEMENT FOR COOPERATION.

WHILE THE APPLICATION FOR LICENSE XSNM-845 WAS PENDING

BEFORE THE COMMISSION, A SUBSEQUENT LICENSE APPLICATION FOR FURTHER FUEL SUPPLY FOR THE TARAPUR ATOMIC POWER STATION WAS FILED WITH THE COMMISSION, LICENSE APPLICATION XSNM-1060. THE PETITIONERS MOVED TO CONSOLIDATE THE TWO LICENSE APPLICATIONS BEFORE THE COMMISSION IN ORDER TO PREVENT THE ISSUES RAISED BY THE PETITIONERS WITH RESPECT TO LICENSE XSNM-845 FROM BECOMING MOOT. BY ORDER DATED JUNE 22, 1977, THE COMMISSION GRANTED THE CONSOLIDATION MOTION SPECIFICALLY IN ORDER TO PREVENT THE ISSUES TENDERED BY PETITIONERS FROM BECOMING MOOT.

THE GOVERNMENT OPPOSES THE RELIEF SOUGHT BY THE MOTION FOR MANDAMUS AND EMERGENCY STAY BECAUSE THE PETITIONERS CANNOT SATISFY THE TRADITIONAL TESTS FOR OBTAINING SUCH INTERIM RELIEF PENDING ADMINISTRATION ACTION IN THAT (1) THE GRANTING OF SUCH RELIEF MAY HAVE A SERIOUS AND ADVERSE IMPACT ON THE PUBLIC INTEREST BY INTERFERING WITH IMPORTANT AND SENSITIVE FOREIGN POLICY INITIATIVES OF THE UNITED STATES; (2) PETITIONERS, IN THE CIRCUMSTANCES OF THIS CASE, CANNOT DEMONSTRATE THAT THEY ARE IRREPARABLY INJURED BY THE ISSUANCE OF LICENSE XSNM-845 SINCE ALL OF THEIR LEGAL RIGHTS ENCOMPASSED IN THIS PROCEEDING HAVE BEEN FULLY PRESERVED BY THE ORDER OF THE NUCLEAR REGULATORY COMMISSION WITH RESPECT TO LICENSE APPLICATION XSNM-1060; (3) THE RELIEF SOUGHT WOULD HAVE A SERIOUS IMPACT UPON PRIVATE INTERESTS, PARTICULARLY IN INDIA WHERE THE FUEL IS URGENTLY REQUIRED FOR THE EFFICIENT OPERATION OF THE TARAPUR ATOMIC STATION; AND (4) PETITIONERS CANNOT DEMONSTRATE THAT THEY WILL PREVAIL ON THE MERITS.

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ONE SEEKING INTERIM RELIEF IN THE FORM OF A STAY OR INJUNCTION AGAINST AGENCY ACTION HAS THE BURDEN OF MAKING

A STRONG SHOWING (1) THAT INTERIM RELIEF WILL NOT INTERFERE WITH THE PUBLIC INTEREST; (2) THAT IT WILL SUFFER IRREPARABLE HARM IN THE ABSENCE OF INTERIM RELIEF; (3) THAT A GRANT OF INTERIM RELIEF WILL NOT SUBSTANTIALLY INJURE PRIVATE INTERESTS; AND (4) THAT IT IS LIKELY TO PREVAIL ON THE MERITS. VIRGINIA PETROLEUM JOBBERS ASSOCIATION V. FEDERAL POWER COMMISSION, 104 U.S. APP. D.C. 106, 110, 259 F.2D 921, 924 (1958). FOR THE REASONS SET FORTH BELOW, INTERVENOR-RESPONDENT BELIEVES THAT PETITIONERS HAVE FAILED TO MAKE ANY OF THESE REQUIRED SHOWINGS.

1. THE RELIEF SOUGHT WOULD HAVE AN ADVERSE IMPACT

UPON THE PUBLIC INTEREST.

THE RECORD BEFORE THIS COURT DEMONSTRATES THAT DELAY IN THE DISSOLUTION OF THE COURT'S JUNE 30, 1977, ORDER MAY SERIOUSLY PREJUDICE FOREIGN POLICY INTERESTS OF THE UNITED STATES AND JEOPARDIZE THE CONDUCT OF UNITED STATES' INITIATIVES IN THE FIELD OF NONPROLIFERATION POLICY. FOR THE PAST MONTH, THE UNITED STATES AND THE GOVERNMENT OF INDIA HAVE BEEN ENGAGED IN NEW AND SENSITIVE DISCUSSIONS IN A BROAD RANGE OF NUCLEAR ISSUES. THE NEXT ROUND IN THESE TALKS HAS NOW BEEN PROPOSED FOR ON OR ABOUT JULY 21, 1977. THESE DISCUSSIONS CONCERN UNCLASSIFIED

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BOTH TECHNICAL AND GENERAL POLICY ISSUES OF NONPROLIFERATION AND ARE VIEWED BY BOTH GOVERNMENTS AS CENTRAL TO ACHIEVING A COMMON UNDERSTANDING OF THE NONPROLIFERATION ISSUES ASSOCIATED WITH UNITED STATES-INDIA NUCLEAR COOPERATION. INTERFERENCE WITH THE CONDUCT OF THESE MEETINGS MAY SERIOUSLY PREJUDICE THESE IMPORTANT FOREIGN POLICY INITIATIVES.

INDEED, IT WAS IN THIS CONTEXT THAT, ON JUNE 8, 1977, IN ACCORDANCE WITH THE PROCEDURE SPECIFIED IN EXECUTIVE ORDER 11902 (FEBRUARY 2, 1976), THE DEPARTMENT OF STATE SUBMITTED THE EXECUTIVE BRANCH'S POSITION TO THE COMMISSION, RECOMMENDING THE IMMEDIATE GRANT OF LICENSE APPLICATION NO. XSNM-845. THE EXECUTIVE BRANCH ADVISED THE COMMISSION THAT ,(A) NEW AND DEMOCRATIC GOVERNMENT HAS TAKEN OFFICE IN INDIA AS A RESULT OF GENERAL ELECTIONS IN MARCH" AND THAT PRESIDENT CARTER IS VERY INTERESTED IN EXPANDING "OUR DIALOGUE WITH THAT GOVERNMENT ON A VARIETY OF ISSUES, INCLUDING NUCLEAR MATTERS." SEE EXECUTIVE BRANCH SUBMISSION TO N.R.C., P. 4. THE EXECUTIVE BRANCH FURTHER ADVISED:

... THAT OUR FOREIGN POLICY INTEREST WILL BE  
BEST SERVED BY ESTABLISHING A FAVORABLE ATMOS-  
PHERE FOR THOSE DISCUSSIONS AND THAT APPROVAL  
OF THIS LICENSE APPLICATION WOULD BE AN  
IMPORTANT STEP IN THIS PROCESS.

THE SAME DOCUMENT INDICATES THAT:

... THE GOVERNMENT OF INDIA HAS GIVEN THE  
UNITED STATES WRITTEN ASSURANCE THAT THE  
SPECIAL NUCLEAR MATERIAL, AND PRODUCTS THERE-  
FROM, EXPORTED BY THE U.S. TO TARAPUR "...  
WILL BE DEVOTED EXCLUSIVELY TO THE NEEDS OF  
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THAT STATION" UNLESS THE U.S. SPECIFICALLY  
AGREES THAT SUCH MATERIAL MAY BE USED FOR  
OTHER PURPOSES. OBVIOUSLY, THE U.S. WOULD  
NOT AGREE TO USE OF SUCH MATERIAL IN ANY NUCLEAR  
EXPLOSIVE DEVICE.

WITH REGARD TO INDIAN POLICIES ON  
DEVELOPING NUCLEAR EXPLOSIVE DEVICES,  
WE ARE ENCOURAGED BY PRIME MINISTER DESAI'S  
RECENT STATEMENTS, AND IT IS OUR HOPE THAT  
INDIA WILL CONCLUDE THAT FURTHER TESTING OF  
PNE'S WILL NOT SERVE A USEFUL PURPOSE. THE  
INDIANS ARE ALSO AWARE THAT UNDER OUR NEW  
NUCLEAR POLICY THE U.S. WILL BE UNABLE IN  
THE FUTURE TO CONTINUE NUCLEAR COOPERATION  
WITH A COUNTRY THAT EXPLODES A NUCLEAR  
DEVICE.

THE EXECUTIVE BRANCH CONCLUDED BY STRONGLY RECOM-  
MENDING "THE PROMPT ISSUANCE OF XSNM-845, AS AMENDED",  
EMPHASIZING THAT:

... (T)HIS SHIPMENT, APPROVED AT THE  
HIGHEST LEVELS, IS BELIEVED TO BE IN THE  
BEST INTEREST OF U.S. FOREIGN POLICY  
OBJECTIVES, PARTICULARLY THOSE RELATED  
TO NON-PROLIFERATION.

AS MR. NYE'S AFFIDAVIT POINTS OUT, THE U.S. GOVERNMENT'S  
CONSIDERATIONS REGARDING LICENSE XSNM-845 WERE  
SPECIFICALLY APPROVED BY PRESIDENT CARTER AND WERE  
DIRECTLY DISCUSSED WITH INDIAN PRIME MINISTER DESAI.  
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IN VIEW OF THE POTENTIAL IMPACT UPON THE PUBLIC  
INTEREST BY INTERFERENCE WITH IMPORTANT FOREIGN POLICY  
OBJECTIVES, THE COURT'S USE OF ITS EQUITY POWER IS  
NEITHER APPROPRIATE NOR WARRANTED. ACCORDINGLY, THE  
MOTIONS FOR EMERGENCY STAY SHOULD BE DENIED AND THIS  
COURT'S ORDER OF JUNE 30, 1977, SHOULD BE VACATED.

2. PETITIONERS' CANNOT DEMONSTRATE THAT THEY WILL BE  
IRREPARABLY INJURED.

PETITIONERS' ARGUMENTS ON IRREPARABLE INJURY ARE  
TWO-FOLD. FIRST, THEY ARGUE THAT THE FUEL WILL BE  
SHIPPED WITHOUT APPROPRIATE CONDITIONS OR RESTRICTIONS  
ON ITS USE IN ORDER TO REDUCE THE RISK OF INJURY. THIS  
CONTENTION IS WITHOUT MERIT BECAUSE, AS SET FORTH IN  
THE EXECUTIVE BRANCH'S SUBMISSION TO THE N.R.C., AN  
ANALYSIS OF ALL OF THE PERTINENT CONSIDERATIONS DEMON-  
STRATES THAT THE SHIPMENT OF THIS SPECIAL NUCLEAR MATERIAL

WOULD NOT BE INIMICAL TO THE COMMON DEFENSE AND SECURITY  
OF THE UNITED STATES AND WOULD BE SUBJECT TO ALL THE TERMS  
AND CONDITIONS OF THE AGREEMENT FOR COOPERATION WITH  
INDIA. FOR EXAMPLE, THE LICENSE APPLICATION ANALYSIS  
POINTS OUT THAT THE LOW-ENRICHED URANIUM "IS NOT A  
NUCLEAR WEAPON MATERIAL" (P. 3); THAT INDIA HAS GIVEN  
THE UNITED STATES WRITTEN ASSURANCE THAT THE SPECIAL  
NUCLEAR MATERIAL AND PRODUCTS THEREFROM WILL BE DEVOTED  
EXCLUSIVELY TO THE NEEDS OF THE TARAPUR FACILITY AND THAT  
THE GRANT OF THIS LICENSE IS AN IMPORTANT ASPECT IN  
CONTINUING NEGOTIATIONS WITH THE NEW DEMOCRATIC GOVERNMENT  
IN INDIA (P. 4). THESE CONSIDERATIONS ARE THE PROVINCE  
OF THE EXECUTIVE BRANCH AND THE PRESIDENT IN DETERMINING  
THE FOREIGN POLICY INTERESTS OF THE UNITED STATES AND  
ARE ENTITLED TO GREAT WEIGHT AND DEFERENCE BEFORE THIS  
COURT.

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SECONDLY, PETITIONERS ALSO CONTEND THAT THE GRANT OF  
THIS LICENSE WILL RENDER THE INSTANT PROCEEDINGS  
MOOT. THAT ARGUMENT ALSO IS WITHOUT MERIT.

PETITIONERS WILL NOT BE PREJUDICED BY THE GRANT OF

THIS LICENSE APPLICATION BECAUSE THE PROCEDURAL ISSUES CONCERNING THE PARTICIPATION IN NUCLEAR LICENSING PROCEEDINGS INVOLVING THE EXPORT OF SPECIAL NUCLEAR MATERIAL HAVE BEEN PRESERVED FOR REVIEW AND RESOLUTION BY THIS COURT. THEIR APPEAL ON THESE ISSUES IS NOT MOOT; THE SHIPMENT THEY SEEK TO ENJOIN IS ONLY ONE IN A SERIES OF FUEL SHIPMENTS TO TARAPUR THAT BEGAN IN 1969. TO DATE, THE COMMISSION AND ITS PREDECESSOR, THE ATOMIC ENERGY COMMISSION, HAVE AUTHORIZED 26 SHIPMENTS OF NUCLEAR FUEL IN CONNECTION WITH THE TARAPUR FACILITY.

IN ADDITION, TO ELIMINATE ANY POSSIBILITY OF PREJUDICE TO PETITIONERS, THE COMMISSION, ON JUNE 22, 1977, GRANTED THEIR MOTION ASKING THAT APPLICATION NUMBER XSNN-1060 BE CONSOLIDATED WITH APPLICATION NO. XSNN-845. THE COMMISSION STATED PART OF ITS RATIONALE FOR CONSOLIDATING THE TWO APPLICATIONS AS FOLLOWS:

... PROCEDURAL ISSUES REGARDING PETITIONERS' PARTICIPATION IN EXPORT LICENSE PROCEEDINGS ARE SUB JUDICE IN NRDC V. NRC, NO. 76-1525 (D.C. CIR., FILED JUNE 11, 1976). CONSOLIDATION OF THESE ACTIONS WILL PERMIT AVOIDANCE OF ANY SUGGESTION THAT THE COMMISSION HAS MOOTED, OR IS SEEKING TO MOOT, THESE PROCEEDINGS BECAUSE THE CIRCUMSTANCES WARRANT

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OUR AUTHORIZING A FURTHER FUEL SHIPMENT

(XSNN-845) SIMILAR TO THAT WHICH WAS AUTHORIZED LAST JULY IN XSNN-805. (EDLOW INTERNATIONAL COMPANY, DOCKET NOS. 70-2131 AND 70-2485 (JUNE 22, 1977), P. 4.)

PETITIONERS STATED THAT THEIR PURPOSE IN SEEKING CONSOLIDATION WAS TO PRESERVE THE JUDICIAL ISSUES CONCERNING THEIR PROCEDURAL RIGHTS AND CONCEDE THAT THE TWO APPLICATIONS "RAISE VIRTUALLY IDENTICAL ISSUES" (SEE INITIAL MOTION FOR STAY, P. 6, FN. 5). THUS, ALTHOUGH PETITIONERS MAINTAIN THAT THE COMMISSION SHOULD ACT UPON THE TWO APPLICATIONS SIMULTANEOUSLY, THEY HAVE ALSO RECOGNIZED THAT THE COMMISSION'S CONSOLIDATION ACTION FULLY PROTECTED THEIR RIGHTS TO A DECISION BY THIS COURT ON THE MERITS OF THEIR STANDING AND HEARING CLAIMS. (SEE FN 1 AT END)

3. THE RELIEF SOUGHT WILL INJURE PRIVATE INTERESTS.

THE LICENSE APPLICATION ANALYSIS SUBMITTED TO THE

N.R.C. BY THE EXECUTIVE BRANCH DEMONSTRATES THAT THE GRANT OF THE LICENSE IS NECESSARY TO PERMIT THE INDIAN FUEL-FABRICATING FACILITY TO RESUME NORMAL OPERATIONS. THUS, THE FAILURE TO EXPORT THIS MATERIAL OR ITS FURTHER DELAY REQUIRES INDIA TO OPERATE ITS FABRICATION FACILITY IN AN INEFFICIENT MANNER. IT SHOULD BE NOTED THAT OUR AGREEMENT FOR COOPERATION WITH INDIA CONTEMPLATES THAT WE WILL PROVIDE FUEL "NECESSARY TO PERMIT THE EFFICIENT AND CONTINUOUS OPERATION OF THE STATION."

4. THERE IS NO LIKELIHOOD OF SUCCESS ON THE MERITS.

WE HAVE PREVIOUSLY FULLY BRIEFED THE CENTRAL ISSUES IN THIS CONTROVERSY REGARDING PETITIONERS' CLAIMS  
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TO PROCEDURAL RIGHTS BEFORE THE N.R.C. WE BELIEVE THAT THEY ARE WITHOUT MERIT. WE ALSO BELIEVE THAT THE CIRCUMSTANCES INVOLVED IN THE PRESENT LICENSE, TIED IN AS THEY ARE WITH CURRENT FOREIGN POLICY OBJECTIVES OF THIS GOVERNMENT, FULLY DEMONSTRATE THAT THE PROCEDURES FOLLOWED BY THE N.R.C. ARE APPROPRIATE AND CONSISTENT WITH APPLICABLE LAW.

CONCLUSION

THE DEPARTMENT OF STATE VIGOROUSLY OPPOSES ANY INJUNCTION EITHER AS INTERIM RELIEF OR OTHERWISE. THE NUCLEAR REGULATORY COMMISSION'S ACTION IN ISSUING LICENSE XSNM-845 WAS LEGALLY CORRECT AND IN THE PUBLIC

INTEREST AND ANY FURTHER DELAY IN THE SHIPMENT OF THIS MATERIAL WOULD CONSTITUTE A DISERVICE TO THE PUBLIC INTEREST. ACCORDINGLY, PETITIONERS' MOTIONS SHOULD BE DENIED.

FN 1. MOREOVER, PETITIONERS' CONTENTION REGARDING ALLEGED IMPROPER CONDUCT BY THE N.R.C., THE STATE DEPARTMENT, AND EDLOW, DESIGNED TO EVADE JUDICIAL REVIEW, ARE WITHOUT FOUNDATION. ALL CONTACTS WITH THE N.R.C. BY THE EXECUTIVE BRANCH IN CONNECTION WITH THIS LICENSE HAVE BEEN MADE IN A ROUTINE AND REGULAR MANNER CONSISTENT WITH THE PROCEDURES ESTABLISHED FOR CONSIDERATION BY THE COMMISSION FOR THIS TYPE OF APPLICATION.

IN ADDITION, PETITIONERS HAVE BEEN ON EXPLICIT NOTICE SINCE AT LEAST MAY 7, 1976, THAT THE COMMISSION WAS PREPARED TO ACT ON THIS LICENSE APPLICATION IF A NEED TO DO SO WERE TO ARISE. WELL OVER AEAR AGO, THE  
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COMMISSION EXPLAINED THAT:

... BECAUSE OF THE GENERIC CHARACTER OF THE ISSUES RAISED, THE COMMISSION MAY ACT ON ONE OR BOTH OF THESE APPLICATIONS PRIOR TO THE CONCLUSION OF THE HEARINGS IF IT FINDS THAT A NEED FOR GREATER EXPEDITION IN ACTING ON THESE LICENSES HAS BEEN SHOWN. THE HEARINGS WOULD THEN BE CONTINUED FOR THE PURPOSE OF ASSISTING THE COMMISSION IN ITS DETERMINATION OF SUBSEQUENT LICENSES FOR THE TARAPUR FACILITY. (IN THE MATTER OF EDLOW INTERNATIONAL COMPANY, 3 NRC 563, 591 (1976).)

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